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# Robert M. Alberts v. Royal Caribbean Cruises Ltd. 834 F.3d 1202 United States Court of Appeals for the Eleventh Circuit (Decided August 23, 2016)

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## EMPLOYED MUSICIAN, ON PASSENGER CRUISE SHIP THAT SAILED FROM FLORIDA TO SEVERAL FOREIGN PORTS IS TRAVELING "ABORAD", UNDER GENERAL MARITIME LAW AND JONES ACT, AND MUST THEREFORERE RESTORT TO ARBITRATION PURSUANT TO HIS CONTRACT OF EMPLOYMENT.

*Robert M. Alberts v. Royal Caribbean Cruises Ltd.*
834 F.3d 1202
United States Court of Appeals for the Eleventh Circuit
(Decided August 23, 2016)

**The Eleventh Circuit Court of Appeals upheld Royal Caribbean Cruise's motion to compel arbitration, after Alberts had initially commenced litigation, because Albert's work as a trumpeter "envisaged" or constituted working abroad.**

Robert M. Alberts ("Alberts") was a musician, lead trumpeter, onboard a cruise ship called the Oasis of Seas, a Bahamian flagged vessel.[1] Oasis of Seas was one of the cruise ships operated by Royal Caribbean Ltd. ("Royal Caribbean").[2] Royal Caribbean is a Liberian corporation with its principal place of business in Florida.[3] The ship traveled two routes: a western route that stopped at the ports of Haiti, Jamaica, and Mexico and an eastern route that stopped at ports in the United States, Virgin Islands, Bahamas, and St. Maarten.[4] Alberts' work consisted of him playing his trumpet only when the ship was sailing the high seas.[5] Alberts signed two employment contracts, both of which contained the same arbitration clause.[6] The language of the clause read that all disputes, "be referred to and resolved exclusively by mandatory binding arbitration pursuant to The United Nations Conventions [*sic*] on the Recognition and Enforcement of Foreign Arbitral Awards."[7]

During one particular voyage, Alberts became ill.[8] He filed suit against Royal Caribbean for unseaworthiness and negligence, under general maritime law and the Jones Act.[9] He alleged that Royal Caribbean failed to provide him an adequate medical exam and failed to take his complaints seriously.[10] Royal Caribbean filed a motion to compel arbitration, which the district court granted.[11]

The Eleventh Circuit Court of Appeals, applied the de novo standard of review.[12] This is a case of first impression on the matter of whether a seaman's work on a cruise ship in

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[1] *Alberts v. Royal Caribbean Cruises, Ltd.*, 834 F.3d 1202, (11th Cir. 2016).
[2] *Id.* at 1203.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 1204.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

international waters that calls on foreign ports constitutes "performance abroad" under the United Nations Convention and Enforcement of Foreign Arbitral Awards.[13]

The appeals court stated that the district court would be correct in granting Royal Caribbean's motion to compel provided four requirements were met.[14] The first requirement is that there must be an agreement in writing, as per the terms of the Convention.[15] The second requirement is that the agreement provides for the actual arbitration to take place within a territory that is a signatory to the Convention.[16] The third requirement is that the relationship arises out of a legal relationship, which is considered commercial.[17] The fourth requirement is that a party to the agreement cannot be an American, or the relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states.[18] Both parties agree that Alberts employment contract satisfies the first three requirements.[19]

The appeals court decision dealt primarily with whether Alberts' contract envisages performance abroad.[20] Alberts argued that "abroad" means being physically present in one or more foreign states.[21] Therefore, since he only played his trumpet while actually sailing in international waters, his contract did not envisage performance abroad.[22] Royal Caribbean's contention is that abroad means anywhere outside of a country.[23] Therefore, since Alberts only played his trumpet while sailing on international waters, and he never played while being physically present within a country, his contract did envisage performance abroad.[24]

The appeals court did not adopt either interpretation.[25] In determining what the term "abroad" actually means, the court looked to both non-binding and binding sources of law. The non-binding authority was a text titled, Reading Law 69, written by Antonin Scalia and Bryan A. Garner.[26] The passage from this particular text read, "words are to be understood in their ordinary, everyday meanings."[27] "Although most common English words have a number of dictionary definitions, one should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise."[28]

The court then examined case law to further its understanding of the term abroad.[29] In *United States v. Hutchins,* the Court held that a naval officer who traveled by steamer from San Francisco to New York was not traveling abroad because the term abroad must be examined by

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[13] 9 U.S.C. § 202.
[14] *Alberts*, supra note 1 at 1204.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.* (quoting 9 U.S.C. § 202).
[19] *Alberts*, supra note 1 at 1204.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Antonin Scalia & Bryan A. Garner, *Reading Law* 69 (2012).
[28] *Id.*
[29] *Alberts*, supra note 1 at 1204.

the termini or "end point" of the journey, rather than by the route actually taken.[30] Hutchins was cited within a third source used by the court titled, *Ballentine's Law Dictionary 5.*[31] The text states that an officer is traveling abroad when he, "goes to a foreign port or from a foreign port to a home port, yet he is not so traveling when going from one place to another in the United States although it may take him upon the high seas."[32]

Accordingly, the Court affirmed the order compelling arbitration under United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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[30] *Id.* (quoting *United States v. Hutchins*, 151 U.S. 542, 14 S.Ct. 421, 38 L.Ed. 264 (1894)).
[31] *Ballentine's Law Dictionary* 5 (3d ed. 1969).
[32] *Id.*